



# **STATE MINING AND GEOLOGY BOARD**

## **EXECUTIVE OFFICER'S REPORT**

February 8, 2006

### **Consideration of an Appeal by Vulcan Materials Company, Regarding a Proposed Surface Mining Permit and Reclamation Plan Within a Designated Mineral Resource Area in the City of Claremont.**

**INTRODUCTION:** Petitioner Vulcan Materials Company, Western Division, (Vulcan, Petitioner) filed on March 9, 2005, with the State Mining and Geology Board (SMGB) an Intent to Appeal a decision by the City of Claremont (City) to deny an application for a surface mining permit to conduct surface mining operations within the City's jurisdiction on land designated by the SMGB to contain regionally significant mineral resources. Vulcan has petitioned the SMGB to take jurisdiction for the appeal under three separate statutes within the Surface Mining and Reclamation Act [SMARA; Public Resources Code (PRC) Section 2710 et seq.]; specifically Sections 2770(e)(1), 2774.4 (a)(6), and 2775.

**BACKGROUND:** The proposed project site is within the jurisdictional boundaries of the City of Claremont and is situated on land referred to as the Pomona Valley Protective Association (PVPA) Property. The subject PVPA Property consists of approximately 214 acres at the north end of the larger San Antonio Spreading Grounds that straddle the boundary between the City of Claremont and the City of Upland immediately south of the San Antonio Dam. The PVPA has granted a mining lease on 214 acres of the Spreading Grounds to Vulcan.

In September 1985 the SMGB adopted in regulation (14 CCR §3550.7,) the area encompassing the proposed project site as a Regionally Significant Mineral Resource Area (Sector B-1, *Designation of Regionally Significant Construction Aggregate Resources in the Claremont-Upland and San Bernardino Production-Consumption Regions*, 1985, SMARA File Number 5). Sector B-1 is zoned MRZ-2 (significant mineral deposits) for Portland Concrete Cement (PCC) grade aggregate, and is mostly coincident with the San Antonio Spreading Grounds. The land within the proposed project area is not zoned for surface mining activities.

Application submittal: On March 15, 2004, Vulcan submitted an application to the City for a General Plan amendment and a zone change to allow sand and gravel extraction on the land within the proposed project area, as well as for a Conditional Use Permit to mine. On April 22, 2004, City planning staff rejected Vulcan's application as incomplete, and indicated numerous areas in the application that required additional analysis, supplementation, and correction.



*Executive Officer's Report*

After consultations with City staff, Vulcan resubmitted a modified application that requested a text change in the Land Use Development Code (LUDC) to allow surface mining activities in the proposed project area. This request for a text change in the LUDC was in lieu of an amendment to the General Plan and a zone change. The land within the San Antonio Spreading Grounds is zoned Open Space (OS), and mining is not a permitted activity within this zoning. The requested text change in the LUDC would provide for mining in the OS zone. Also included in the modified application were requests for a mining permit and reclamation plan approval. City planning staff considered the modified application complete in December 2004.

City Planning Commission Decision: The City Planning Commission conducted a public hearing on February 1, 2005, on Vulcan's application to allow for surface mining in the proposed project area. The Planning Commission rejected changing the text in the LUDC to allow mining as a permitted land use, thus halting consideration of the applicant's requests for a mining permit and a reclamation plan approval.

Vulcan's appeal: Vulcan appealed the Planning Commission's action to the City Council. The Council, in public session on February 22, 2005, determined to not accept the appeal (an option available to the Council), thereby letting stand the Planning Commission's decision. Vulcan timely filed its Intent to Appeal with the SMGB within the 15 days of exhausting its rights to appeal in accordance with the procedures of the City of Claremont. Vulcan exhausted its appeal rights with the City on February 22, 2005; the Intent to Appeal was received at the SMGB office on March 9, 2005 (15 days).

Vulcan subsequently petitioned the SMGB to take jurisdiction for the initial Intent to Appeal under three separate statutes within the Surface Mining and Reclamation Act (SMARA; Public Resources Code (PRC) Section 2710, et seq.); specifically, these sections are PRC Sections 2770(e)(1), 2774.4 (a)(6), and 2775.

Appeal Decision: In light of the foregoing and the body of evidence submitted by the petitioner, Vulcan Materials Company, Western Division, with its Intent to Appeal, the Chairman concluded that:

1. There was sufficient prima facie evidence that the SMGB did have jurisdiction under PRC Section 2770(e) to review and approve Vulcan's reclamation plan. The appeal under this statute was accepted.
2. The SMGB was the SMARA lead agency for the City of Claremont pursuant to PRC Section 2774.5(c) and (d).



3. There was sufficient prima facie evidence that the SMGB did have jurisdiction under PRC Section 2775 to consider the Petitioner's appeal that its application for a permit to mine on designated mineral lands was denied.

The appeal under this statute was accepted.

4. The appeal under PRC Section 2774.4 requesting the SMGB to assume the City's SMARA powers was not applicable. The SMGB already was the SMARA lead agency for the City pursuant to PRC Section 2774.5(c) and (d).
5. The request to order the City to issue a mining permit was not within the SMGB's authority.

On April 8, 2005, the Chairman accepted the Petitioner's appeals under PRC Sections 2770(e) and 2775. The Petitioner's appeal under PRC Section 2774.4 was denied.

Administrative Record: On August 22, 2005, the SMGB received three certified copies of the administrative record pertaining to Vulcan Materials Company, Western Division, Intent to Appeal the City of Claremont's alleged failure to process a surface mining permit and reclamation plan within a Designated Mineral Resource Area. On October 14, 2005, upon review and pursuant to CCR Title 14, Division 2, Chapter 8, Subchapter 1, Article 4, Section 3628, the Executive Officer concluded that the administrative record was considered complete.

**CONSIDERATION BEFORE THE BOARD:** The issue before the SMGB at the time of the hearing is defined pursuant to PRC Section 2775(c), in which the Board will be considering:

"Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency which processed the original application within 30 days of the filing of the appeal, or such longer period as may be mutually agreed upon by the board and the person filing the appeal. In any such action, the board shall not exercise its independent judgment on the evidence but shall only determine whether the decision of the lead agency is supported by substantial evidence in the light of the whole record. If the board determines the decision of the lead agency is not supported by substantial evidence in the light of the whole record it shall remand the appeal to the lead agency and the lead agency shall schedule a public hearing to reconsider its action."



Pursuant to CCR Article 4, Section 3634, the Board will be considering:

"Hearing Procedures - Determination. Following the public hearing, the Board shall determine whether, upon the record before it, the lead agency decision was made based on substantial evidence in light of the whole record. Notification of the Board's determination shall be made by certified mail to the appellant, the lead agency, and the project proponent (when not the same person as the appellant) within 15 days following the regular business meeting of the Board at which the decision is made."

**DISCUSSION:** As discussed earlier, Vulcan states its grounds for appeal are that the City denied Vulcan's reclamation plan and conditional use permit, and failed to provide information to the State Geologist as required when permitting incompatible developments with respect to designated mineral lands.

Following the designation of the mineral resources by the SMGB in 1985, the City incorporated into its General Plan (pursuant to PRC Section 2762) a Conservation Element that included the City's mineral resource management policies (MRMP). The MRMP discusses the designated mineral resources and the potential for mining those resources within the City (ref. III/2-4 of the Conservation Element). In discussing the PVPA land (i.e. Sector B-1 of the designation report), the City writes,

"As open space, the aggregate deposits are preserved and the land is protected from incompatible urban development which would prevent access to aggregate deposits in the future."

Thus, the City recognized the importance of the MRZ-2 minerals in Sector B-1 and the necessity to prevent developments that would preclude the extraction of the minerals in the future. The City goes on to note the importance of the natural state of the land in Sector B-1, and the ecological importance of the specialized habitats found in this area. Therefore, the City concluded that,

"Before any permit can be issued for mining of this open space, it will be important to demonstrate that mining operations will not diminish the importance of this open space to the community and that all significant adverse impacts to this natural environment can be prevented or minimized to the level consistent with community goals." [III/2-5]

Also in the Conservation Element, under the heading "Natural Resources Will Be Considered As Follows", the City lists in Items N through V its criteria for considering and issuing approvals for reclamation plans and mining permits on designated mineral land.



Clearly, in the City's General Plan, Conservation Element, mineral resource management policies, the City considered the designated mineral resources in Sector B-1 to be protected by the Open Space zone, and to be available for future mining activities. Therefore, the current omission of mining as an allowable activity within the Open Space zone of the City appears to be in conflict with its mineral resource management policies established in the General Plan. The proposed revised text for the Land Use Development Code to allow mining in an Open Space zone would have addressed the apparent conflict.

It is, also, noteworthy that Item P in the mineral resource management policies (III/6-3) states:

"If a permit application for aggregate mining is filed with the City, the City shall prepare and adopt an ordinance in accordance with the state policy as set forth in the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.), which establishes procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations."  
(Reference PRC Sections 2774 and 2774.3)

When Vulcan submitted an acceptable reclamation plan and permit application in December 2004, the City was required by both statute and its own General Plan policies to develop a mining ordinance in accordance with SMARA so that it could review and approve reclamation plans and issue mining permits. There is no evidence in the submitted record that indicates the City commenced its statutorily mandated responsibility to prepare a surface mining ordinance.

In the absence of a City mining ordinance, the SMGB is the SMARA lead agency for the review and approval of mining reclamation plans (PRC Section 2774.5[c] and [d]). Therefore, the SMGB may review, and approve if acceptable, a reclamation plan for Vulcan. A reclamation plan the SMGB approves is not subject to modification by the local lead agency.

Under PRC Sections 2762 and 2763, a lead agency within whose jurisdiction the SMGB has designated a mineral resource as having regional significance is required, prior to permitting a use that would threaten the potential to extract minerals in that area, to prepare an analytical statement specifying its reasons for permitting the proposed incompatible use (ref: PRC Section 2762). The lead agency must provide its analysis to the State Geologist and to the SMGB for review. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's MRMP and shall also, in balancing mineral values against alternative land uses, consider the importance of the minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.



According to the Petitioner's assertions (pg. 7, March 8<sup>th</sup> letter), "In both the Planning Commission's and the City Council's deliberations, much discussion was given to the presumption that mining in the proximity of present and future homes is incompatible and should not be allowed. However, the City approved the developments without notice to the State Geologist that such approvals would threaten the potential to extract minerals from the San Antonio Spreading Grounds, an area designated by the State Geologist as MRZ-2."

**FINDINGS:**

Finding 1: SMARA requires a lead agency to protect a designated mineral resource from developments that would be incompatible with the extraction of the mineral resource; however, it appears that the City was concerned with preventing current and future residential developments from being impacted by "incompatible" future mining operations. The City's reported discussions emphasize the opposite of what SMARA requires; and,

Finding 2: The City did not prepare an impact analysis prior to the development of new housing about the periphery of the mineral resource area; therefore the City did not consider the residential developments to be incompatible with future mining operations. That is, the development of residences would not preclude the extraction of the mineral resource.

Finding 3: The City's actions in rejecting consideration of approval of a reclamation plan and consideration of the issuing of a mining permit is inconsistent with its General Plan's statements, especially in its Mineral Resource Management Policies, requiring the subject Open Space lands to be preserved for future mining operations.

Finding 4: The City's inaction in adopting a SMGB-certified surface mining ordinance upon submission of an application to mine is in conflict with its General Plan statements and with SMARA (PRC Section 2774).

Finally, the SMGB does not have authority in statute to order the City to issue Vulcan a surface mining permit. The SMGB is prohibited from considering issuing of permits to mine under PRC Sections 2756, 2757, 2774.4(a), and 2774.5(d). The SMGB is, however, the SMARA lead agency for the City pursuant to PRC Section 2774.5(c). The SMGB has the authority to review and approve the Petitioner's proposed reclamation plan. Until such time however, as the issue of the surface mining permit is ultimately resolved, the SMGB should defer resolution or approval of the proposed reclamation plan.

